

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY))	
PARTNERS, COUNTRY MUSIC.))	
TELEVISION, INC., PARAMOUNT))	
PICTURES CORPORATION, and BLACK))	
ENTERTAINMENT TELEVISION, LLC,))	
)	
Plaintiffs,))	
)	
vs.))	NO. 07-CV-2203
)	
YOUTUBE, INC., YOUTUBE, LLC,))	
and GOOGLE, INC.,))	
)	
Defendants.))	
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)	
THE FOOTBALL ASSOCIATION PREMIER))	
LEAGUE LIMITED, BOURNE CO., et al.,))	
on behalf of themselves and all))	
others similarly situated,))	
)	
Plaintiffs,))	
)	
vs.))	NO. 07-CV-3582
)	
YOUTUBE, INC., YOUTUBE, LLC, and))	
GOOGLE, INC.,))	
)	
Defendants.))	
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HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF OMID KORDESTANI
SAN FRANCISCO, CALIFORNIA
THURSDAY, FEBRUARY 12, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
JOB NO. 16382

1 FEBRUARY 12, 2009

2 9:33 A.M.

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4 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
5 OMID KORDESTANI, at SHEARMAN & STERLING,
6 525 Market Street, 15th Floor, San Francisco
7 California pursuant to notice, before me,
8 ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR
9 License No. 9830.
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A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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A P P E A R A N C E S: (Continued.)

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ALSO PRESENT: Adam Barea, Google, Inc.

Kelly Truelove, Consultant

Lou Meadows, Videographer.

---oOo---

KORDESTANI

SAN FRANCISCO, CALIFORNIA

THURSDAY, FEBRUARY 12, 2009, 9:33 A.M.

09:34:16 THE VIDEOGRAPHER: On the record.

09:34:17 This is today's videotaped deposition of

09:34:22 Omid Kordestani, taken on February 12, 2009, at

09:34:28 Shearman & Sterling, 525 Market Street, 15th Floor, in

09:34:32 San Francisco, California. In the matter of Viacom

09:34:32 International, Inc., vs. YouTube, Inc., and The

09:34:32 Football Premier -- excuse me -- The Football

09:34:32 Association Premier League Limited, et al., vs.

09:34:44 YouTube, Inc., et al.

09:34:44 Case No. 07-CV-2103 and 07-CV-3582, in the

09:34:52 United States District Court, for the Southern

09:34:54 District of New York.

09:34:55 My name is Lou Meadows, and I represent

09:34:59 David-Feldman Worldwide. Located at 600 Anton

09:35:05 Boulevard, Suite 1100, in Costa Mesa, California.

09:35:07 We are now commencing at 9:33 a.m.

09:35:09 Will all present please identify themselves

09:35:13 and state whom you represent.

09:35:13 MS. KOHLMANN: Susan Kohlmann from Jenner &

09:35:18 Block, representing the Viacom plaintiffs.

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09:35:20 MR. HAREN: Eric Haren from Jenner & Block,
09:35:21 representing the Viacom plaintiffs.

09:35:21 MR. GALDSTON: Benjamin Galdston of Bernstein
09:35:24 Litowitz, representing the Premier League and Class
09:35:28 plaintiffs.

09:35:28 MR. TRUELOVE: Kelly Truelove, consultants
09:35:29 for Viacom plaintiffs.

09:35:30 MR. MANCINI: John Mancini, Mayer Brown,
09:35:33 counsel for defendants Google and YouTube.

09:35:40 MS. WILSON: Caroline Wilson from Wilson
09:35:41 Sonsini, counsel for defendants Google and YouTube.

09:35:41 MR. BAREA: Adam Barea, Google, Inc.

09:35:44 THE VIDEOGRAPHER: Thank you.

09:35:45 We are getting a little bit of BlackBerry
09:35:49 transmission. Somebody forgot.

09:35:51 And will the court reporter please administer
09:35:52 the oath. Thank you.

09:35:52

09:35:52 OMID KORDESTANI,
09:35:53 having been sworn as a witness, testified as follows:

09:35:53

09:36:07 EXAMINATION BY MS. KOHLMANN

09:36:07 MS. KOHLMANN: Q. Good morning,

09:36:09 Mr. Kordestani.

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2 09:43:46 Q 1999.

3 09:43:47 And were you vice president of business

4 09:43:50 development when you left Netscape in 1999?

5 09:43:53 A Yes.

6 09:43:53 Q And when you left Netscape, where did you go?

7 09:43:57 A Google.

8 09:43:58 Q Okay. Now, Mr. Kordestani, you're Google's

9 09:44:05 business founder; are you not?

10 09:44:07 A It's a --

11 09:44:07 MR. MANCINI: Objection to form.

12 09:44:09 THE WITNESS: It's a title that they've

13 09:44:12 affectionately given me.

14 09:44:13 MS. KOHLMANN: Q. It's on their website --

15 09:44:16 A Right.

16 09:44:16 Q -- isn't it, on your bio --

17 09:44:16 A Yes.

18 09:44:18 Q -- correct?

19 09:44:18 So as Google's business founder, what did --

20 09:44:21 what did you do to earn that title? Why did they call

21 09:44:24 you that?

22 09:44:27 A I was the first business executive, business

23 09:44:29 employee and responsible for building Google's

24 09:44:31 business operations.

25 09:44:32 Q In fact, they say you developed and

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2 09:44:35 implemented the company's initial business model;

3 09:44:38 isn't that right?

4 09:44:39 A Yes.

5 09:44:39 Q Okay. What was the company's initial

6 09:44:41 business model?

7 09:44:42 A Licensing our search services and

8 09:44:51 advertising, search advertising.

9 09:44:53 Q Can you explain to me what you mean by

10 09:44:56 licensing your search services?

11 09:44:59 A We power search for companies, corporations,

12 09:45:03 and the other websites.

13 09:45:07 Q Okay. And the other part of the business

14 09:45:10 model that you developed and implemented was search

15 09:45:13 advertising; is that what you said?

16 09:45:15 A Yes.

17 09:45:15 Q So can you explain what search -- what you

18 09:45:18 mean by "search advertising"?

19 09:45:20 A It's related to advertise on search terms and

20 09:45:26 targets, advertising to users search queries.

21 09:45:38 Q So correct me if I'm wrong, did you say it's

22 09:45:44 the ability to advertise on search terms and targets?

23 09:45:48 A And target advertising to users' queries,

24 09:45:50 search queries.

25 09:45:52 Q Okay. Okay.

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2 09:45:55 So -- and that was the company's initial
3 09:46:00 business model; is that correct?

4 09:46:02 A Yes.

5 09:46:02 Q And has that business model changed over
6 09:46:08 time?

7 09:46:08 MR. MANCINI: Objection; vague.

8 09:46:10 THE WITNESS: What do you mean by that?

9 09:46:11 MS. KOHLMANN: Q. What's the business model
10 09:46:12 today? Is it different?

11 09:46:13 A It's primary advertising still today.

12 09:46:15 Q Search advertising?

13 09:46:17 A Yes.

14 09:46:17 Q Advertising where -- on -- on the same --

15 09:46:23 with the same criteria, targeting, targeted

16 09:46:27 advertising with search terms?

17 09:46:30 MR. MANCINI: Objection; vague.

18 09:46:31 THE WITNESS: The question is? What is the
19 09:46:32 question again?

20 09:46:32 MS. KOHLMANN: Q. What is the business model
21 09:46:34 today? And how is it different?

22 09:46:36 A Majority of our revenue is still from search
23 09:46:38 advertising.

24 09:46:41 Q And has the way in which the revenue from
25 09:46:45 searches is derived changed at all from when you

KORDESTANI

09:46:48 initially created the -- the Google business model?

09:46:52 MR. MANCINI: Objection to form.

09:46:53 THE WITNESS: Has the way -- what do you mean

09:46:55 by that?

09:46:56 MS. KOHLMANN: Q. Are -- are there different

09:46:57 ways in which the advertising gets done and you

09:46:59 rec- -- you monetize value?

09:47:02 MR. MANCINI: Objection to form.

09:47:03 THE WITNESS: Algorithms and underlying

09:47:10 technology has evolved.

09:47:12 MS. KOHLMANN: Q. And how has it evolved?

09:47:16 A More sophisticated in the way we target

09:47:18 advertising, paying attention to quality of ads.

09:47:25 Q And in the time from when you arrived at

09:47:29 Google and today, the company acquired DoubleClick;

09:47:35 didn't it?

09:47:36 A Yes.

09:47:36 Q And DoubleClick has certain capabilities to

09:47:39 enhance the targeting of ads; doesn't it?

09:47:42 MR. MANCINI: Objection; lacks foundation.

09:47:43 THE WITNESS: Could you clarify the question?

09:47:47 MS. KOHLMANN: Q. Why don't you tell me what

09:47:49 DoubleClick added to the equation.

09:47:50 MR. MANCINI: Objection to form.

1 KORDESTANI

09:47:51 2 MS. KOHLMANN: You can answer.

09:47:52 3 THE WITNESS: DoubleClick provides an
09:47:58 4 advertising platform that helps both advertisers and
09:48:04 5 publishers manage their advertising campaigns and
09:48:11 6 advertising yield from their properties better.

09:48:14 7 MS. KOHLMANN: Q. How does it enable
09:48:16 8 advertisers to manage the advertising yield from their
09:48:19 9 properties better?

09:48:23 10 A It -- it -- it -- they have a suit of
09:48:26 11 products for both advertisers and publishers that
09:48:31 12 helps them manage their advertising campaigns online.

09:48:35 13 Q We'll come back to DoubleClick.

09:48:37 14 So in 1999, when you started at Google, what
09:48:40 15 was your title?

09:48:43 16 A It would be vice president of sales and
09:48:45 17 business development.

09:48:47 18 Q And what were your duties and
09:48:50 19 responsibilities?

09:48:52 20 A Establishing all the revenue operations and
09:48:56 21 customer relationships, partnerships.

09:49:00 22 Q And did there come a point in time when your
09:49:03 23 title changed?

09:49:06 24 A I -- I was promoted to senior vice president.

09:49:07 25 Q Do you know when that was?

1 KORDESTANI

09:49:10 2 A Don't remember the exact date.

09:49:11 3 Q Okay. Any other titles that you've held
09:49:15 4 while at Google?

09:49:19 5 A The title may have slightly changed to sales
09:49:22 6 and operations, but it's basically worldwide sales and
09:49:27 7 operations and business development.

09:49:29 8 Q Okay. Setting aside the titles --

09:49:31 9 A Yeah.

09:49:31 10 Q -- for a moment, how has your job changed
09:49:34 11 over the course of the last ten years?

09:49:37 12 MR. MANCINI: Objection to form.

09:49:38 13 THE WITNESS: Could you clarify the question?

09:49:40 14 MS. KOHLMANN: Q. Well, do you do today what
09:49:41 15 you did in 1999?

09:49:44 16 A Pretty much.

09:49:45 17 Q Are there any added responsibilities since
09:49:47 18 you started with the company in 1999?

09:49:51 19 A The company has got larger operations, have
09:49:54 20 become larger, but the fundamental job is the same.

09:49:58 21 Q Do you get involved in, for example,
09:50:00 22 acquisitions?

09:50:01 23 MR. MANCINI: Objection to form.

09:50:03 24 THE WITNESS: I'm not directly involved for
09:50:05 25 acquisitions.

1 KORDESTANI

10:02:44 2 MS. KOHLMANN: Q. From the time you started
10:02:46 3 in 1999 'til three months ago when it became the
10:02:51 4 operating committee, what was the function of the
10:02:56 5 Executive Management Group?

10:02:57 6 A It's -- it's Eric Schmidt, senior of staff
10:03:03 7 meeting.

10:03:04 8 Q And how often did the Executive Management
10:03:08 9 Group meet?

10:03:09 10 A Once a week.

10:03:16 11 Q And was that an in-person meeting or a
10:03:18 12 telephone conference?

10:03:20 13 A Primarily in person. Some people travel,
10:03:23 14 sometimes call in.

10:03:24 15 Q And were agendas prepared for those meetings?

10:03:28 16 A Yes.

10:03:28 17 Q And were there sometimes presentations made
10:03:35 18 at the meetings?

10:03:37 19 A Yes.

10:03:37 20 Q And if there was an action to be taken at the
10:03:43 21 company, such as a change in policy, was that brought
10:03:47 22 before the Executive Management Group?

10:03:50 23 MR. MANCINI: Objection to form.

10:03:51 24 THE WITNESS: Depends how -- how -- if
10:03:58 25 they're important, the discussion of that policy was.

1 KORDESTANI

10:04:00 2 MS. KOHLMANN: Okay.

10:04:01 3 Q Who prepared the agenda?

10:04:04 4 A Typically Eric, and others contributed to
10:04:08 5 items for discussion.

10:04:09 6 Q Did you, at times, contribute items for
10:04:12 7 discussion?

10:04:12 8 A Yes.

10:04:12 9 Q How were the agendas distributed? On e-mail?

10:04:16 10 A On e-mail.

10:04:17 11 Q And were notes taken of the EMG meetings?

10:04:24 12 A Typically it's -- I'm not an official note
10:04:29 13 taker, but typically, you know, you would take notes,
10:04:31 14 depending on your -- your interest, your area.

10:04:35 15 Q So each individual member --

10:04:37 16 A Yeah.

10:04:37 17 Q -- of the EMG took notes?

10:04:40 18 A Yeah.

10:04:40 19 Q But there were no notes taken of the meeting
10:04:42 20 that were saved in any particular way?

10:04:45 21 MR. MANCINI: Objection to characterization.

10:04:46 22 MS. KOHLMANN: Q. As far as you're aware?

10:04:48 23 A There -- there were not an official notes,
10:04:50 24 other than, you know, action items from the meeting.

10:04:52 25 Q And were the action items something that each

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10:04:54 2 individual prepared or action items were prepared and
10:04:58 3 came out of the meeting?

10:05:00 4 MR. MANCINI: Objection to form.

10:05:01 5 THE WITNESS: What do you mean coming out of
10:05:05 6 the meeting?

10:05:05 7 MS. KOHLMANN: Q. When you say action
10:05:06 8 items --

10:05:06 9 A Yeah.

10:05:07 10 Q -- were generally prepared, who prepared the
10:05:09 11 action items?

10:05:10 12 A Discussed in the meeting, and Eric's
10:05:12 13 assistant would then keep track of those.

10:05:16 14 Q And would Eric's assistant typically e-mail
10:05:19 15 the action items to the participants in the meeting
10:05:23 16 after the meeting occurred?

10:05:26 17 A It would be typically in the next agenda as
10:05:32 18 a -- as a series of action logs.

10:05:34 19 Q And where are those agendas kept?

10:05:39 20 A They -- they -- I assume it was in -- in
10:05:45 21 e-mail form or in a document that was then printed.

10:05:48 22 Q So -- so, for example, you would have agendas
10:05:52 23 in your own e-mail box that you would have received
10:05:55 24 from any EMG meeting you attended?

10:05:57 25 A Yes.

1 KORDESTANI

10:05:58 2 Q It would be an attachment to an e-mail?

10:06:01 3 A It would be an attachment, or it would be an
10:06:04 4 online document.

10:06:05 5 Q Okay. And if they were printed, did you ever
10:06:07 6 print out the agendas?

10:06:10 7 A Yes.

10:06:10 8 Q And you would bring it to the meeting with
10:06:12 9 you?

10:06:13 10 A Typically, yes.

10:06:14 11 Q And what did you -- did you take notes on the
10:06:16 12 agendas sometimes?

10:06:18 13 A Yes.

10:06:18 14 Q And you have files in your office for those
10:06:22 15 agendas?

10:06:22 16 A No.

10:06:22 17 Q What do you do with the agendas?

10:06:24 18 A After I speak with my staff, I usually shred
10:06:29 19 them or put them in a shred box.

10:06:31 20 Q And that's when you -- sorry.

10:06:32 21 A Then I put them in a shred box, yeah.

10:06:34 22 Q Okay. That's been your practice for the last
10:06:36 23 several years?

10:06:37 24 A Yes.

10:06:37 25 Q Has that been your practice in the last year

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10:06:40 2 as well?

10:06:42 3 A Absolutely.

10:06:42 4 Q Did you receive a litigation hold in
10:06:45 5 connection with this action, Mr. Kordestani?

10:06:47 6 A Yes.

10:06:47 7 Q And what did that say?

10:06:49 8 A That if there are any documents in my office
10:06:50 9 or filing cabinets or disks, computers, that all of
10:06:55 10 that has to be made available.

10:06:57 11 Q Does the litigation hold refer to any
10:07:04 12 obligation to not destroy documents?

10:07:07 13 A Yes.

10:07:07 14 Q What does it say with respect to that?

10:07:12 15 MR. MANCINI: Objection.

10:07:13 16 Are -- have we been allowing testimony about
10:07:16 17 the contents of the litigation hold in this case?

10:07:19 18 MS. KOHLMANN: Yes, I think so. I mean, you
10:07:23 19 can take a position one way or the other. I don't
10:07:26 20 think there's any -- anything privileged about what
10:07:30 21 the litigation hold says, and he's already testified
10:07:33 22 what it said with respect to --

10:07:35 23 MR. MANCINI: He's -- so I'll -- I'll allow
10:07:38 24 him to answer and preserve the objection.

10:07:40 25 MS. KOHLMANN: Okay.

1 KORDESTANI

10:07:40 2 You can answer.

10:07:41 3 THE WITNESS: What's the question again?

10:07:47 4 MS. KOHLMANN: Q. Did the litigation hold
10:07:51 5 discuss the preservation of documents? Did the
10:07:59 6 litigation hold say anything about just not destroying
10:08:03 7 documents, to your recollection?

10:08:06 8 A I believe so, and I immediately inform my
10:08:09 9 assistant and IT folks that we're going to collect all
10:08:14 10 the documentation for our legal department, that all
10:08:15 11 of that be done according to the -- that document.

10:08:19 12 Q But -- but you nevertheless destroyed the
10:08:21 13 agendas for the EMG after you attended meetings?

10:08:25 14 MR. MANCINI: Objection. I think that's an
10:08:26 15 unfair mischaracterization. He also said --

10:08:28 16 MS. KOHLMANN: John --

10:08:29 17 MR. MANCINI: -- he had electronic copies.
10:08:30 18 That's an unfair charac- --

10:08:30 19 MS. KOHLMANN: -- you are allowed to say
10:08:31 20 objection.

10:08:31 21 MR. MANCINI: That's unfair.

10:08:32 22 MS. KOHLMANN: I've allowed you a lot of
10:08:33 23 latitude 'til now. You're coaching the witness.

10:08:35 24 MR. MANCINI: I'm not.

10:08:36 25 MS. KOHLMANN: Please just say "Objection."

1 KORDESTANI

10:08:37 2 MR. MANCINI: It is an unfair --

10:08:38 3 MS. KOHLMANN: It's going to be a long day.

10:08:40 4 MR. MANCINI: It's an unfair

10:08:41 5 characterization, Susan, of the testimony, and you

10:08:43 6 know it.

10:08:44 7 MS. KOHLMANN: I don't think so, and the

10:08:46 8 record will speak for itself.

10:08:50 9 Q So just -- do you have physical files in your
10:08:52 10 office in London, Mr. Kordestani?

10:08:56 11 A I have filing cab -- I have filing cabinets,
10:08:57 12 but no physical files. I don't take -- I don't like
10:09:00 13 to keep a lot of paper.

10:09:01 14 Q So the filing cabinets are empty?

10:09:04 15 A Pretty much.

10:09:05 16 Q Okay. And you have file cabinets in
10:09:07 17 California?

10:09:07 18 A Yes.

10:09:07 19 Q And your assistant maintains whatever files
10:09:11 20 you have in Cal- -- in -- in your office here in
10:09:13 21 Mountain View?

10:09:15 22 A Yes.

10:09:15 23 Q And do you -- how do you maintain your
10:09:20 24 e-mails? What system -- first of all, I assume you --
10:09:25 25 you use Google?

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10:09:27 2 A Yes.

10:09:27 3 Q And do you -- is there a -- do you delete
10:09:34 4 e-mails regularly from your in-box?

10:09:38 5 A Mostly spam, but we use a version of the
10:09:48 6 Google e-mail system that doesn't require a lot of
10:09:51 7 deleting.

10:09:51 8 Q Why is that?

10:09:52 9 A It's just easier to search for documents then
10:09:56 10 file or delete.

10:09:57 11 Q So -- so it's just one big in-box and you can
10:10:00 12 search at -- at will basically and nothing gets
10:10:02 13 deleted?

10:10:03 14 A Some things get deleted, but -- but mostly I
10:10:06 15 delete spam, as I said.

10:10:08 16 Q So you would have -- would your -- would
10:10:10 17 there be on your e-mail, for example, e-mails
10:10:16 18 concerning the acquisition of YouTube?

10:10:24 19 A The -- any -- there -- there are documents
10:10:25 20 related to the YouTube, absolutely.

10:10:27 21 Q And are there also, for example, documents
10:10:30 22 relating to DoubleClick?

10:10:32 23 A Yes.

10:10:32 24 Q Okay. And those e-mails were collected for
10:10:37 25 the purposes of this litigation?

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2 10:38:09 Q So if an advertiser wants to understand how
3 10:38:11 to advertise on Google, this explains the process;
4 10:38:15 isn't that right?

5 10:38:16 A Yes.

6 10:38:16 Q And there's -- in addition to AdWords, if you
7 10:38:32 go to the last page of this document, there is
8 10:38:35 something called "AdSense"; is that correct?

9 10:38:38 A Yes.

10 10:38:39 Q And how does AdSense differ from AdWords?

11 10:38:45 A AdSense is the program that website owners or
12 10:38:50 publishers who want to have Google advertisers appear
13 10:38:55 on their website use, so they earn money by using our
14 10:38:59 system to have our ads appear on their site.

15 10:39:03 Q And does Google earn revenue from
16 10:39:06 contextualized -- contextualized ads on third-party
17 10:39:12 sites?

18 10:39:12 MR. MANCINI: Objection to form.

19 10:39:13 THE WITNESS: Yes.

20 10:39:14 MS. KOHLMANN: Okay.

21 10:39:14 Q And how -- how exactly does AdSense work?
22 10:39:16 Can you describe the process to me?

23 10:39:18 A It's basically a website identifies an area
24 10:39:27 on their website where they like to have ads appear,
25 10:39:30 and ads are either targeted based on keywords, if they

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2 10:39:33 have a search page, or if they have content on their
3 10:39:38 page, we have a system that identifies relevant ads to
4 10:39:42 the content on that page.

5 10:39:44 Q So, for example, if you go to the last page
6 10:39:46 of this Exhibit 2 that I've put in front of you, in
7 10:39:54 the middle of page it says, "AdSense for content
8 10:39:57 automatically crawls the content of your pages and
9 10:40:00 delivers text and image ads that are relevant to your
10 10:40:01 audience and your site content."

11 10:40:03 A Yes.

12 10:40:03 Q Is that what you were describing, it crawls
13 10:40:06 the content?

14 10:40:09 A Yes.

15 10:40:09 Q And what are the factors that go into an
16 10:40:21 AdSense for content determination about which ads to
17 10:40:25 display on a particular site?

18 10:40:27 MR. MANCINI: Objection to form.

19 10:40:28 THE WITNESS: What -- what do you mean by
20 10:40:34 that? What is the question?

21 10:40:35 MS. KOHLMANN: Q. So how -- what -- if I
22 10:40:39 understood your testimony, and I understand the last
23 10:40:42 page of Exhibit 2, there is a crawl of the content
24 10:40:46 which then generates an ad; correct?

25 10:40:51 A Is it --

KORDESTANI

11:36:07 to Google.

11:36:07 Do you recall seeing any documents where

11:36:09 "Yellow" would refer to YouTube and "Green" to

11:36:13 Google --

11:36:13 MR. MANCINI: Objection.

11:36:13 MS. KOHLMANN: Q. -- in the context of the

11:36:14 acquisition by Google of YouTube?

11:36:17 MR. MANCINI: Objection to form.

11:36:18 THE WITNESS: I don't recall the documents,

11:36:20 but I remember the keywords.

11:36:22 MS. KOHLMANN: Okay.

11:36:24 Q So turning to page nine, which is "Key

11:36:28 Yellow," that is revenue -- that is YouTube revenue

11:36:31 assumptions. You see the -- there's a column of "Key

11:36:38 Variable"; do you see that?

11:36:41 A Yes.

11:36:41 Q All the way on the right.

11:36:43 And those variables include "Videos Viewed,"

11:36:47 "Pages Viewed," "Premium Video," High Value

11:36:50 Non-Premium Video," Run of Site Ads," and Sponsored

11:36:54 Ads"; do you see that?

11:36:55 A Uh-huh.

11:36:56 Q And under "Premium Video," do you see -- next

11:36:59 to "Premium Video" there is a column

KORDESTANI

1
2 11:37:05 "Description/2007E Traffic Assumptions"; do you see
3 11:37:09 that?

4 11:37:11 A Where is that? Sorry.

5 11:37:13 Q The -- the -- the second column next to "Key
6 11:37:15 Variable."

7 11:37:16 A Yes.

8 11:37:16 Q You see that?

9 11:37:17 And under -- for the "Key Variable Premium
10 11:37:23 Video," you see where it says "60 percent of total
11 11:37:26 video streams on Yellow website are 'Premium'?"

12 11:37:29 A Yes.

13 11:37:29 Q What's your understanding of "Premium"?

14 11:37:33 MR. MANCINI: Objection to form.

15 11:37:34 THE WITNESS: I'm not sure what they were
16 11:37:36 using in this term. I've heard the use of "Premium"
17 11:37:40 before.

18 11:37:40 MS. KOHLMANN: Q. What's your understanding
19 11:37:41 of "Premium"?

20 11:37:43 A Professional content.

21 11:37:44 Q And just -- do you have any reason to believe
22 11:37:52 that that number is incorrect?

23 11:37:54 MR. MANCINI: Objection; lacks foundation.

24 11:37:57 THE WITNESS: I -- I have no idea where --
25 11:37:59 about that --

1 KORDESTANI

12:10:49 2 12.

12:10:50 3 Actually, you know what, let's do this one
12:10:55 4 first, so 18. Can you give me 12, too? Maybe I'll
12:11:39 5 just go to this. You got 12? Let's start with that.
12:11:54 6 Okay. Here you go. Sorry.

12:12:20 7 MS. WILSON: Thank you.

12:12:28 8 MR. HAREN: This is 12?

12:12:29 9 MS. KOHLMANN: Uh-huh.

12:12:33 10 (Document marked Kordestani Exhibit 8
12:12:44 11 for identification.)

12:12:44 12 MS. KOHLMANN: Q. Tell me when you've had a
12:12:45 13 chance to review it; okay?

12:13:07 14 A Okay.

12:13:07 15 Q Okay. Mr. Kordestani, I've marked as
12:13:09 16 exhibit -- what am I up to?

12:13:16 17 THE REPORTER: 8.

12:13:17 18 MS. KOHLMANN: 8.

12:13:18 19 Q A document, it's an e-mail exchange, and it
12:13:22 20 bears the Bates No. G00001-00496651 through 496654,
12:13:34 21 and this is an e-mail exchange.

12:13:39 22 First of all, this -- can you briefly
12:13:41 23 describe this document on the record?

12:13:43 24 A It's an e-mail exchange between Eric Schmidt,
12:13:47 25 David Eun, and me.

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1 KORDESTANI

12:13:48 2 Q And you?

12:13:49 3 A (Witness nods head.)

12:13:49 4 Q And what's the date?

12:13:51 5 A It's the 12th of May 2006.

12:13:55 6 Q And the subject?

12:13:58 7 A "Video GPS - Content."

12:13:59 8 Q Okay. And the first-in-time e-mail is an
12:14:10 9 e-mail from David to Eric in which you're copied; is
12:14:14 10 that right?

12:14:14 11 A Yeah.

12:14:17 12 Q And it refers to a video GPS that is going to
12:14:20 13 occur some time later; correct?

12:14:26 14 A Yes.

12:14:26 15 Q And at this point in time, you may have said
12:14:31 16 this earlier, what was Mr. Eun's duties and
12:14:32 17 responsibilities?

12:14:33 18 A He was working for me, in charge of content
12:14:37 19 partnerships.

12:14:38 20 Q And he states here that "The Video team --"
12:14:44 21 would that be the Google Video essentially?

12:14:48 22 A Yes.

12:14:48 23 Q "The Video team has focused on two questions
12:14:51 24 in preparation for the GPS: How we 'beat YouTube' in
12:14:57 25 the short term; and 2) how we went over time."

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1 KORDESTANI

12:14:59 2 Do you see that?

12:15:01 3 A Yes.

12:15:01 4 Q Does that refresh your recollection that
12:15:05 5 Google Video did want to beat YouTube?

12:15:09 6 A Sure, yes. The team was in charge of video
12:15:13 7 service and felt competitive with YouTube.

12:15:15 8 Q And in the next paragraph, there's reference
12:15:22 9 to a heated debate about whether, quote, "we should
12:15:26 10 relax enforcement of our copyright policies in an
12:15:29 11 effort to stimulate traffic growth, despite the
12:15:31 12 inevitable damage it would cause to relationships with
12:15:35 13 content owners"; do you see that?

12:15:35 14 A Yes.

12:15:37 15 MR. MANCINI: Objection; the document speaks
12:15:39 16 for itself.

12:15:39 17 MS. KOHLMANN: Q. Do you recall a debate
12:15:40 18 about relaxing the enforcement of copyright policies?

12:15:45 19 A I don't know how big the debate was, but some
12:15:48 20 people had that opinion.

12:15:49 21 Q What was your opinion?

12:15:51 22 A That we -- we need to know the facts, and
12:15:53 23 these are opinions by teams that were under pressure
12:15:56 24 to build a service that works, and they had different
12:16:01 25 theories.

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1 KORDESTANI

12:16:01 2 Q Well, did -- was it -- did you disagree with
12:16:07 3 Mr. Eun, that -- where he says, "We should beat
12:16:13 4 YouTube - and all competitors - but not at all costs,"
12:16:16 5 and "A large part of their," referring to YouTube,
12:16:19 6 "traffic is from pirated content"?

12:16:27 7 A I don't --

12:16:27 8 MR. MANCINI: Objection to form.

12:16:28 9 THE WITNESS: This -- this -- essentially,
12:16:29 10 this was their opinions. They didn't have any facts,
12:16:31 11 and we always believed that it's important to be
12:16:35 12 comprehensive and also honor copyright holders' rights
12:16:40 13 so --

12:16:40 14 MS. KOHLMANN: So --

12:16:42 15 THE WITNESS: -- it was debating something
12:16:44 16 without facts and it was just opinions.

12:16:46 17 MS. KOHLMANN: Q. Well, he goes on in the
12:16:47 18 next sentence to say, we are comparing our traffic
12:16:50 19 numbers to their -- theirs. We would acknowledge that
12:16:52 20 we are comparing our, quote, "legal traffic," close
12:16:55 21 quote, "to their mix of traffic from legal and illegal
12:16:58 22 content"; do you see that?

12:16:59 23 A Yes, I see that.

12:17:00 24 MR. MANCINI: Objection; the document speaks
12:17:01 25 for itself.

1 KORDESTANI

12:17:02 2 MS. KOHLMANN: Q. Did you agree with that?

12:17:04 3 MR. MANCINI: Objection to form.

12:17:07 4 THE WITNESS: We did not -- if you read
12:17:10 5 later, we believed there was a lot of also just noise
12:17:14 6 in the industry. That's what one senior media
12:17:18 7 executive told me, and there was no fact-based
12:17:21 8 information here. It was opinions.

12:17:23 9 MS. KOHLMANN: Q. But a media executive
12:17:26 10 would be a potential content owner; correct?

12:17:29 11 A Yes.

12:17:29 12 Q And you would listen if a media executive
12:17:32 13 said, as they say here, that they refer to YouTube as
12:17:35 14 a, quote, "Video Grokster"; correct?

12:17:37 15 A They were also --

12:17:37 16 MR. MANCINI: Objection to form.

12:17:38 17 THE WITNESS: Media -- media executives are
12:17:40 18 also doing deals with YouTube at the time, so this
12:17:44 19 is -- again, this was just one opinion here.

12:17:46 20 MS. KOHLMANN: Q. At the -- at the top of
12:17:54 21 the e-mail, Eric Schmidt says, "While I understand
12:18:01 22 your points and generally agree I don't see a winning
12:18:04 23 strategy from any of the video camps."

12:18:08 24 Did you have any discussions with Mr. Schmidt
12:18:10 25 about Mr. Eun's e-mail that you recall?

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1 KORDESTANI

12:18:17 2 A There were lots of discussions. I don't
12:18:19 3 remember a specific discussion about this e-mail.

12:18:20 4 Q Yeah, okay.

12:18:38 5 To your knowledge, did Google Video ever
12:18:41 6 engage in pre-upload review of content?

12:18:45 7 MR. MANCINI: Objection to form.

12:18:46 8 THE WITNESS: I was not close enough to -- to
12:18:50 9 know that.

12:18:51 10 MS. KOHLMANN: Okay. Should have 12? No.
12:18:57 11 I'm sorry. Right.

12:19:25 12 MR. HAREN: Are you sure you don't have it?

12:19:27 13 MS. KOHLMANN: Oh, I'm sorry. What number is
12:19:28 14 it?

12:19:29 15 MR. HAREN: 11.

12:19:42 16 MS. KOHLMANN: Is it back here? No. I think
12:20:04 17 it's 150, maybe. 11. That one is 11. Actually, 11
12:20:13 18 is what I should do first. Okay. Is this the next
12:20:33 19 one?

12:20:34 20 (Document marked Kordestani Exhibit 9
12:20:37 21 for identification.)

12:20:37 22 MS. KOHLMANN: I'm going to show you what's
12:20:38 23 been marked as Kordestani Exhibit 9. Have you got it?
12:20:47 24 Okay. Should I -- yeah.

12:20:53 25 Q Mr. Kordestani, I've handed you a document

KORDESTANI

13:52:09 with anyone in particular?

13:52:10 MR. MANCINI: Objection to form.

13:52:13 THE WITNESS: Again, same -- part of the same
13:52:16 updates with David Eun with discussions at these
13:52:19 meetings.

13:52:20 MS. KOHLMANN: Q. And what -- do you
13:52:23 remember any specific conversation with David Eun?

13:52:29 A Again, general conversations about getting
13:52:33 ready for a product review or what happened at the
13:52:35 product review, briefings after meetings.

13:52:38 Q This is about copyright policy in particular,
13:52:40 I'm asking.

13:52:41 A No. One of --

13:52:42 MR. MANCINI: Objection to form.

13:52:43 THE WITNESS: -- copyright policy is one of
13:52:44 many items.

13:52:45 MS. KOHLMANN: Q. But you don't remember, as
13:52:45 you -- I'm trying to -- what I'm trying to determine
13:52:47 is whether you remember, as you sit here today, any
13:52:50 specific conversation -- let's start with Mr. Eun --
13:52:54 with Mr. Eun about copyright policy?

13:52:57 MR. MANCINI: Objection to form.

13:52:58 THE WITNESS: I remember having discussed it,
13:53:00 yes.

KORDESTANI

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2 13:53:01 MS. KOHLMANN: Q. What do you remember about
3 13:53:02 those conversations?

4 13:53:04 A Same kinds of things you pointed to here,
5 13:53:07 that their theory is that different policy approaches
6 13:53:13 could result in different success rates in user
7 13:53:19 activity and adoption of video service.

8 13:53:22 Q How would you define "success rate"?

9 13:53:29 A Popularity of the service.

10 13:53:32 Q Revenue?

11 13:53:35 A No.

12 13:53:35 MR. MANCINI: Objection to form.

13 13:53:36 THE WITNESS: Never discussed revenue in that
14 13:53:37 context.

15 13:53:38 MS. KOHLMANN: Q. And how would a different
16 13:53:40 policy approach affect popularity of the service?

17 13:53:43 MR. MANCINI: Objection; lacks foundation.

18 13:53:47 THE WITNESS: It's what you pointed to in the
19 13:53:49 documents. I'm referring to those same conversations,
20 13:53:52 the theory that YouTube is different because some
21 13:53:55 people think there is a different policy to have.

22 13:54:00 MS. KOHLMANN: Q. Do you -- do you remember
23 13:54:01 any specific conversation with Mr. Eun about that
24 13:54:03 topic?

25 13:54:05 MR. MANCINI: Objection to form.

KORDESTANI

1
2 14:01:35 Q I'm sorry. I didn't hear you.
3 14:01:36 A It's not significant for Google right now.
4 14:01:38 Q It's not significant? I can't hear you. I'm
5 14:01:42 sorry.
6 14:01:42 A It's not a significant revenue contribution
7 14:01:45 to Google right now.
8 14:01:45 Q Right now? Is that what you said?
9 14:01:47 A Right.
10 14:01:48 Q I'm sorry.
11 14:01:49 What -- but they -- I believe you said it was
12 14:01:51 \$40 to \$50 million a quarter; correct?
13 14:01:53 A Right now.
14 14:01:53 Q How do they generate that revenue?
15 14:01:56 A Selling advertising on -- on Homepages, on
16 14:02:01 brand channels, experimenting with new formats, just
17 14:02:07 some on partner pages. Not significant enough yet.
18 14:02:11 Q Okay. Can -- can -- you said Homepages.
19 14:02:14 What other pages do they sell ads on?
20 14:02:17 A Brand channels they're called, where you make
21 14:02:21 a special page for advertisers, special content.
22 14:02:24 Q Is the Homepage the same as a search page?
23 14:02:28 A No.
24 14:02:28 Q Do they sell advertising on search pages?
25 14:02:31 A I think we're experimenting with that.

KORDESTANI

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2 14:02:33 Q What other kind of pages are there?

3 14:02:38 A Watch Pages.

4 14:02:39 Q And do they sell advertising on Watch Pages?

5 14:02:42 A There are some, some advertising sold, and

6 14:02:47 some are sold by partners.

7 14:02:50 Q Do you know where the majority of -- of the

8 14:02:52 revenue that you have identified, the 40 to 50 million

9 14:02:58 a quarter, comes from with respect to each of these

10 14:03:00 pages?

11 14:03:01 A I think primarily, I believe, most of it is

12 14:03:03 still Homepages and these brand channels and so forth.

13 14:03:07 Q Who does the -- who -- do you know who did

14 14:03:23 the financial modeling at the time of the acquisition?

15 14:03:27 MR. MANCINI: Objection; asked and answered.

16 14:03:29 THE WITNESS: Probably a combination of our

17 14:03:31 finance team and corporate development team.

18 14:03:33 MS. KOHLMANN: Q. Would corporate

19 14:03:34 development be you?

20 14:03:34 A No, David Drummond.

21 14:03:36 Q David Drummond.

22 14:03:37 So what part of the acquisition of YouTube

23 14:03:41 did you analyze, if any?

24 14:03:44 MR. MANCINI: Objection; lacks foundation.

25 14:03:47 THE WITNESS: Just over -- I just -- as part

KORDESTANI

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2 15:43:36 mischaracterize of the documents and that is not in
3 15:43:39 the record. We have not seen that, Susan. You are
4 15:43:41 offering testimony now by a question that is totally
5 15:43:43 improper.

6 15:43:44 MS. KOHLMANN: You can answer.

7 15:43:45 THE WITNESS: I agree with my attorney. I
8 15:43:46 never said anything like that. I didn't --

9 15:43:48 MS. KOHLMANN: I didn't say you did. You
10 15:43:49 wanna read -- should I repeat the question?

11 15:43:53 THE WITNESS: I don't know where that comment
12 15:43:54 comes from.

13 15:43:55 MS. KOHLMANN: Q. From the documents that
14 15:43:56 you saw, the term sheets and the signed agreements in
15 15:44:00 the fall of 2006, there were available fingerprinting
16 15:44:07 technologies which you did not offer content owners
17 15:44:12 who had not entered into negotiations; is that --

18 15:44:15 A I don't agree with that.

19 15:44:17 MR. MANCINI: Same objections.

20 15:44:18 MS. KOHLMANN: Q. You had offered it to
21 15:44:19 content owners?

22 15:44:20 A I don't know, and now you're asking me
23 15:44:21 specifics.

24 15:44:21 MR. MANCINI: Same objections.

25 15:44:22 MS. KOHLMANN: Q. Who at Google or YouTube